

**§ 228.1 Basis and purpose.**

(a) Sections 101(a)(2), 101(a)(3)(A), and 101(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(2), 1371(a)(3)(A), and 1371(b)) and these regulations authorize the Assistant Administrator of the National Marine Fisheries Service, to:

(1) Impose regulations governing the taking of marine mammals incidental to commercial fishing operations;

(2) Waive the moratorium and to adopt regulations with respect to the taking and importing of animals from each species of marine mammals under the Assistant Administrator's jurisdiction;

(3) Prescribe regulations governing the taking of depleted marine mammals by any Indian, Aleut or Eskimo, respectively. In prescribing regulations to carry out the provisions of said sections, the Act refers the Assistant Administrator to section 103 (16 U.S.C. 1373). In accordance with section 103(d), regulations must be made on the record after opportunity for an agency hearing on such regulations and, in the case of a waiver, on the determination by the Assistant Administrator to waive the moratorium pursuant to section 101(a)(3)(A) of the Act (16 U.S.C. 1371(a)(3)(A)).

(b) The purpose of this part is to establish rules of practice and procedure for all hearings conducted pursuant to section 103(d) of the Act.

**§ 228.2 Definitions.**

(a) *Party* means, for the purposes of this subpart:

(1) The Assistant Administrator or the Assistant Administrator's representative;

(2) A person who has notified the Assistant Administrator by specified dates of his or her intent to participate in the hearing pursuant to §§ 228.5 and 228.14(b).

(b) *Witness* means, for the purpose of this part, any person who submits written direct testimony on the proposed regulations. A person may be both a party and a witness.

**§ 228.3 Scope of regulations.**

The procedural regulations in this part govern the practice and procedure in hearings held under section 103(d) of

the Act. These hearings will be governed by the provisions of 5 U.S.C. 556 and section 557 of the Administrative Procedure Act. The regulations shall be construed to secure the just, speedy and inexpensive determination of all issues raised with respect to any waiver or regulation proposed pursuant to section 103(d) of the Act with full protection for the rights of all persons affected thereby.

**§ 228.4 Notice of hearing.**

(a) A notice of hearing on any proposed regulations shall be published in the FEDERAL REGISTER, together with the Assistant Administrator's proposed determination to waive the moratorium pursuant to section 101(a)(3)(A) of the Act (16 U.S.C. 1371(a)(3)(A)), where applicable.

(b) The notice shall state:

(1) The nature of the hearing;

(2) The place and date of the hearing. The date shall not be less than 60 days after publication of notice of the hearing;

(3) The legal authority under which the hearing is to be held;

(4) The proposed regulations and waiver, where applicable, and a summary of the statements required by section 103(d) of the Act (16 U.S.C. 1373(d));

(5) Issues of fact which may be involved in the hearing;

(6) If a draft Environmental Impact Statement is required, the date of publication of the draft and the place(s) where the draft and comments thereon may be viewed and copied;

(7) Any written advice received from the Marine Mammal Commission;

(8) The place(s) where records and submitted direct testimony will be kept for public inspection;

(9) The final date for filing with the Assistant Administrator a notice of intent to participate in the hearing pursuant to § 228.5;

(10) The final date for submission of direct testimony on the proposed regulations and waiver, if applicable, and the number of copies required;

(11) The docket number assigned to the case which shall be used in all subsequent proceedings; and

(12) The place and date of the pre-hearing conference.